

Flexible working requests to become a Day 1 right on 6 April 2024 and further changes to follow soon

The Flexible Working (Amendment) Regulations 2023 have been laid before Parliament and, if passed, will make the right to request flexible working a Day 1 right on 6 April 2024. Further changes will be made to the flexible working framework later this year and a new statutory Acas Code of Practice on flexible working requests has been laid before Parliament to reflect all of these changes.

Right to request flexible working to become a Day 1 employment right – 6 April 2024

Currently, an employee needs 26 weeks' continuous service in order to make a flexible working request. However, the Flexible Working (Amendment) Regulations 2023 will remove this service requirement, making the right a Day 1 employment right. The Regulations were laid before Parliament on 11 December 2023 and will come into force on 6 April 2024.

This change means that employers would be wise to state which, if any, flexible working options would be suitable for a role in job advertisements. Employers may also wish to identify candidates' preferences in job interviews. Although this will not prevent an employee asking for something different on Day 1 of their employment, the hope is that an upfront discussion will allow a suitable pattern to be identified from the off,

rather than having to deal with a request in the first few months of employment.

However, care must be taken to hold any such discussions in a non-discriminatory way, for example, by asking an open question about whether the candidate has a preferred working pattern and not making any adverse comments about the preferred pattern and/or the candidate's reasons for wishing to work in a certain way.

Changes to the flexible working request procedure – expected by end of July 2024

The Employment Relations (Flexible Working) Act 2023 became law on 20 July 2023. The Act will make the following reforms to the flexible working request process:

- Employees will no longer have to explain what effect they think the requested change would have on their employer and how that effect might be dealt with.
- Employees will be permitted to make two flexible working requests per year rather than one.
- Employers will be required to consult with employees before refusing requests.

- Employers will have two months to make a decision on a flexible working request (rather than three months as is currently the case) unless an extension is agreed.

At present, it is not clear exactly when these changes will come into force. The Act states that the changes will come into force on a date or dates specified by the Secretary of State. The Government has said that it expects the measures to come into force approximately a year after Royal Assent, in order to give employers time to prepare i.e. sometime in July 2024. However, it remains possible that the changes will be introduced on 6 April 2024, to accompany the change to a Day 1 right.

New statutory Acas Code on flexible working

The draft statutory Acas Code of Practice on requests for flexible working (following a public consultation held last year) was laid before Parliament on 11 December 2023 and it is likely to become final within 40 days of that date (i.e. by 20 January 2024). Although the Code is not legally binding, it will be taken into account by Employment Tribunals when considering relevant cases and it may count against an employer where the Code has not been followed.

The Code has been updated to reflect changes to ways of working since the Code was first introduced in 2014, and to reflect the forthcoming legal reforms discussed above. The draft Code:

- Recommends that employers have a clear policy and procedure for handling flexible working requests. It states that this can be helpful in making everyone aware of what is expected.
- Clarifies that while employees may make up to two requests in a 12-month period, they may only have one “live” request ongoing at any one time. A request will be regarded as live during any appeal process. A request will only be regarded as closed once either a decision is made, the request is withdrawn or the two-month period for deciding the requests ends (without any extension having been agreed).
- Reminds employers that they must consider requests in a reasonable manner and must agree to a request unless there is a genuine business reason not to do so. The reasons for rejecting a request are unchanged. The Code also reminds employers that the legal obligation to make reasonable adjustments for disabled employees is separate to the obligation to consider a flexible working request.
- Recommends that where an employer **accepts** a request, it should confirm the decision in writing and offer the employee the chance for a discussion to clarify any information that may be helpful in implementing the agreed arrangements (and if such a discussion is held

then a record should be kept). However, the Code recognises that the employer and employee may agree that a meeting is not necessary in these circumstances.

- Underlines that employers must not **reject** a request without first consulting the employee. The Code provides clarity on what this consultation should involve as follows:
- The employer should invite the employee to a consultation meeting. The employee should be given a reasonable period of time to prepare for the meeting, which should be held without unreasonable delay.
- The employer should allow employees to be accompanied to meetings, even though there is no statutory right to be accompanied. The Code recommends that employers permit an employee to be accompanied by either a colleague, a trade union representative or an official employed by a trade union.
- The meeting should be held privately but may be held in person or remotely via video conferencing or telephone. The meeting should be chaired by someone with sufficient authority to make a decision.

- The meeting should be conducted in a way that allows for a reasonable discussion and consideration of the request. If the request cannot be accepted in full, the employer and employee should discuss suitable alternatives and whether a trial period may be appropriate. A written record of the meeting should be kept.
- The final decision should be confirmed in writing without unreasonable delay and within the two-month period for deciding requests (unless an extension has been agreed). It should clearly explain the business reasons for rejecting the request, together with any additional information which is reasonable to help explain the decision.
- Encourages employers to allow for an appeal process where a request is rejected, even though there is no statutory right to an appeal. Employers should set out details of any appeal process in their decision letter.
- Reminds employers that they must not subject an employee to any detriment or dismissal in connection with having made a flexible working request or having issued legal proceedings about the same.

Acas has indicated that it will also update its non-statutory

guidance on flexible working, which complements the Code.

What steps should employers take now?

In addition to considering whether to address flexible working in job adverts and interviews, we would recommend that employers consider the following preparatory steps:

- Revise your Flexible Working policy to reflect the legal reforms. Although employees are no longer required to explain the potential effect of their request, we would recommend that this is still encouraged on the basis that it may help speed up your consideration of the request.

- Consider what your consultation process will look like. As the draft Code outlines, this should usually include a face-to-face meeting. Where you are tending towards **rejecting** a request, a meeting affords the employee an opportunity to make further submissions and allows time for consideration of alternatives. Where you are tending towards **accepting** a request, a meeting can add value by allowing an opportunity to discuss the request in more detail and think about ways to implement the arrangement successfully.

- Train HR and line managers on how these reforms will

impact the handling of flexible working requests. When the Acas Code is finalised, HR and line managers should be asked to read it.

- Consider whether you need to devote further resource to the management of flexible working requests, in light of the fact that employees will be able to make two requests per year, the shorter time frame for providing your response, and that requests may be made from Day 1 of employment.
- Consider whether record-keeping procedures should be strengthened (for example, to record how many requests have been made within a 12-month period and to document what form of consultation has been undertaken).

[Employment Relations \(Flexible Working\) Act 2023](#)

[Flexible Working \(Amendment\) Regulations 2023](#)

[Draft Acas Code of Practice on Requests for Flexible Working](#)

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda

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